

REMARKS

An RCE and an IDS have been filed herewith. The IDS references several patents and co-pending patent applications. The applicants request the Examiner to enter the amendments made herein to the specification and claims and to consider the newly referenced prior art.

Claims 12-15, 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hult (U.S. Patent Number 5,822,700, hereinafter "Hult") in view of Murto (U.S. Patent Number 5,966,662). Respectfully disagreeing with these rejections, reconsideration is requested by the applicants. Nonetheless, the applicants have amended independent claims 1 and 29 to more clearly emphasize their patentability in view of the prior art.

Independent claim 12 recites (emphasis added) "when no **short messaging** response is received from the MS after transmitting the **short messaging** to the MS only in those cells of the plurality of cells in which the paging channel loading level is below a **short messaging threshold**, transmitting the **short messaging** to the MS in at least one of those cells of the plurality of cells in which the paging channel loading level is above the **short messaging threshold**." Independent claim 29 recites (emphasis added) "adapted to transmit the **short messaging** to the MS via the wireless transceiver equipment in at least one of those cells of the plurality of cells in which the paging channel loading level is above the **short messaging threshold**, when no **short messaging** response is received from the MS after transmitting the **short messaging** to the MS only in those cells of the plurality of cells in which the paging channel loading level is below a **short messaging threshold**."

Regarding the rejection of claims 15 and 30 (now incorporated into claims 12 and 29, respectively), the Examiner cites Murto column 8 lines 9-13, column 6 lines 45-47 and column 2 lines 34-35. All of these citations refer to the paging message of Murto. However, the present claims refer to short messaging. As cited by the Examiner, Hult refers to short messaging service. For example, Hult column 4, lines 37-65 reads as follows (emphasis added):

Referring now again to FIG. 2, following the determination in step 108 of maximum permitted short message service message length (L_{sub.m}), the received request for a short message service message transmission over the air interface 26 is processed in step 110 to identify a length (L_{sub.r}) of the short message service message requested for transmission. The requested short message service message length (L_{sub.r}) is then compared to the maximum permitted short message service message length (L_{sub.m}) in decision step 112 to determine whether the requested length exceeds the maximum length. If the short message service message has a requested length (L_{sub.r}) that does not exceed the determined maximum length (L_{sub.m}), branch 114, a test is then made in decision step 116 to determine if the control channel 38 of the air interface 26 has sufficient capacity. If sufficient capacity exists, branch 118, the short message service message is authorized for transmission over the control channel 38 of the air interface 26 and is transmitted in step 120. If the short message service message has a requested length (L_{sub.r}) that exceeds the determined maximum length (L_{sub.m}), branch 122, or when there is insufficient capacity on the control channel 38, branch 124, authorization for transmission over the control channel 38 of the air interface 26 is refused. These short message service messages must then either be saved in step 126 for subsequent transmission over the control channel 38 (at a point when the measured control channel load (l) sufficiently decreases and/or capacity becomes available) or are alternatively transmitted over the traffic channel 36 portion of the air interface 26 in step 128.

Hult column 6, lines 10-24 reads as follows (emphasis added):

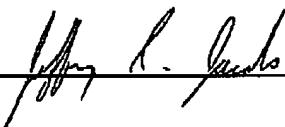
If the length (L_{sub.r}) of the requested mobile originated short message service message is less than or equal to the maximum permitted short message service message length (L_{sub.m}) (branch 114), and capacity on the control channel 38 is available (branch 118), then the message is authorized for transmission by the network. The mobile station 18 then generates a short message service origination communication that is transmitted over the control channel 38 of the air interface 26 (step 120). If, on the other hand, the length (L_{sub.r}) of the requested mobile originated short message service message is greater than the maximum permitted short message service message length (L_{sub.m}) (branch 122), or insufficient capacity exists (branch 124), then the message is not authorized for transmission by the mobile station 18 at that time.

However, the applicants submit that Hult teaches away (for short message service messaging) from the tiered paging approach that Murto describes for paging. The applicants submit that Hult, in essence, describes not transmitting short message service messaging via the control channel when the message is too large or when control channel capacity is insufficient. Subsequently transmitting short message service messaging via the control channel in those cells where authorization was refused because of message size / channel capacity, simply when no short messaging response is received, does not make sense to the applicants. Thus, since Hult (at least logically) teaches away, the applicants submit that Murto and Hult cannot be combined to achieve the present claims, as the Examiner suggests.

Since none of the references cited, either independently or in combination, teach all of the limitations of independent claims 12 or 29, or therefore, all the limitations of their respective dependent claims, it is asserted that neither anticipation nor a prima facie case for obviousness has been shown. No remaining grounds for rejection or objection being given; the claims in their present form are asserted to be patentable over the prior art of record and in condition for allowance. Therefore, allowance and issuance of this case is earnestly solicited.

The Examiner is invited to contact the undersigned, if such communication would advance the prosecution of the present application. Lastly, please charge any additional fees (including extension of time fees) or credit overpayment to Deposit Account No. 502117 – Motorola, Inc.

Respectfully submitted,
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